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REPORT OF THE
SPECIAL COMMITTEE
OF THE
LEGISLATURE OF THE
PROVINCE OF ONTARIO
CHARGED WITH THE REVISION
OF THE COMPANIES ACT (ONTARIO)
AND RELATED ACTS





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**REPORT OF THE SPECIAL COMMITTEE
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AND RELATED ACTS**

Thompson

TORONTO

Printed and Published by Baptist Johnston, Printer to the Queen's Most Excellent Majesty
1953

The Legislative Library has ~~not~~ a copy of the Bill Appendix "B"

See first volume of Proceedings

As only a limited number of the Bill Appendix "B" has been printed, copies have been supplied to Members of the Select Committee and a copy is attached to the signed Report tabled in the House.

*If anyone should ever
want to see Bill Appendix "B"
he would have to apply
to the Clerk of the House*



1952

*to see the original copy of it
tabled in the House*

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*Final copy of Proceedings
is Bill 57*



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REPORT OF THE SPECIAL COMMITTEE OF THE LEGISLATURE
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TO : HONOURABLE THE REVEREND M. C. DAVIES,
Speaker of the Legislative Assembly of the Province
of Ontario.

Sir,

We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario, on the fourteenth day of March, 1952, "to enquire into and review The Companies' Act of the Province of Ontario and related Acts, including The Extra Provincial Corporations Act, The Companies' Information Act, The Mortmain and Charitable Uses Act and regulations made thereunder and making such enquiry into similar legislation of the Parliament of Canada and the Legislatures of the respective Provinces of Canada and other jurisdictions and the Committee on Uniformity of Legislation, with a view to recommending improvements in the legislation of this Legislature which is in force in this Province, and for these purposes to consider a Bill to be submitted to this House under the title of The Companies' Act, 1952," have now the honour to submit our report.

INTRODUCTORY

1. A companies or corporations Act should, we believe, deal with corporations irrespective of their particular activities. Particular questions of economic or other policy involving particular classes of corporations is usually dealt with by separate legislation, and, in this Committee's view, this should continue to be the approach.

2. We have held twenty-five meetings, at fourteen of which we heard oral evidence. In May and June we supplied many organizations and individuals with copies of Bill No. 87, The Companies Act, 1952, given first reading in the spring session (1952). In September we distributed copies of an interim draft Bill prepared under the authority of and for the consideration of this Committee. To those receiving the draft Bill, we also gave a special memorandum indicating new features contained in the Bill, and, a little later, an index. Six hundred copies of the interim draft Bill were so distributed. Widespread study of the subject by many persons has resulted and been of great assistance to the Committee. A list of the organizations and individuals who gave oral evidence before us is set out in Appendix "A". Many briefs and memoranda were submitted and full details of the evidence can be found in the printed proceedings of the Committee.

3. So far as we have been able to ascertain, this is the first occasion in Canada in which the company law of any jurisdiction has been studied extensively by a parliamentary committee. There has been no revision of The Ontario Companies Act for forty years and your Committee felt it necessary to rewrite that statute almost in its entirety. The Bill which is annexed to this Report as Appendix "B" is the result of our work and study and is recommended for enactment by the Legislature of the Province of Ontario at its next session.

4. We note that a review of The Securities Act did not fall within our terms of reference. We have made no comment on that statute, but we are all agreed that the fullest practical disclosure of information by promoters and companies soliciting funds for investment from members of the public, one of the main purposes of The Securities Act, is the most effective curb on abuses of the right to invite subscriptions from the public.

5. In the course of our review, we devoted considerable time to the study of the report of the Committee on Company Law Amendment to the President of the Board of Trade published in 1945, more popularly called the Cohen Report after the Honourable Mr. Justice Cohen, chairman of the Committee, and the resulting Companies Act, 1948, enacted by the British Parliament. We also studied certain features of the business corporation law of several states of the United States of America, which study included sittings of the Committee in Chicago, Cleveland and New York, where considerable useful and valuable evidence was taken. A review was made of the company statutes of Canada, and of all Provinces.

6. We were greatly aided in our researches and in the work of revision by Mr. Robert Cudney, Q.C., Deputy Provincial Secretary, and counsel to the Committee, who has laboured indefatigably, ably assisted by Mr. L. R. Mac-Tavish, Q.C., Legislative Counsel, Mr. Samuel Lavine and Miss Ruth B. Allan, both of the Department of the Provincial Secretary, Mr. J. B. S. Southey, Solicitor, Secretary to the Committee, and Messrs. G. Y. Ormsby, and Anthony Ormsby, Chartered Accountants, advisers to the Committee in connection with accounting matters. We have also been greatly assisted by the voluntary services of a number of public-spirited individuals and associations, to all of whom we express our appreciation.

7. The Bill, Appendix "B", is divided into nine parts, as follows:

- Part I — Incorporation, etc.,
- Part II — Companies,
- Part III — Corporations without share capital,
- Part IV — Mining Companies,
- Part V — Co-operative Corporations,
- Part VI — Insurance Companies,
- Part VII — Winding-up,
- Part VIII — General,
- Part IX — Extra Provincial Corporations.

We propose in this Report to deal with each part in turn emphasizing the provisions to which we wish to draw attention, and giving in many cases our reasons for the recommendations incorporated in the Bill.

It is recommended that the Bill be known as "The Corporations Act, 1952." The word "Corporation" is defined in the Bill as meaning a corporation with or without share capital, while "Company" is defined as meaning a corporation with share capital. As the Act deals with both types of corporations, we considered the more comprehensive term to be more appropriate.

PART I—INCORPORATION, ETC.

Name:

We have given a good deal of study to the question of names of corporations. The Bill provides a method for reserving a name for a limited period, prior to incorporation (Section 15), so that persons who have obtained Departmental approval of a proposed name may proceed to incorporate promptly without fear of the name being taken in the meantime by another corporation.

We recommend that a company should not be permitted to carry on any of its undertaking in a name other than its corporate name, unless, where another name is used, clear evidence of the real entity involved is apparent. To this end, Section 13 of the Bill is recommended. Section 16 will permit unincorporated businesses to protect their names from those applying for incorporation.

PART II—COMPANIES

Organization:

We have sought some means of simplifying the procedure for organization of a corporation by eliminating useless fictions. Sections 18, 19, 295 and 310 of the Bill are illustrations of this.

Voting and Non-voting Shares:

Consideration was given to the suggestion that every holder of a preference share or a common share should be entitled to at least one vote for each share held at all meetings of the shareholders of the company. In some cases this might lead to complications, even if made applicable only to shares authorized after the coming into force of the new Act, so no recommendation was made in this connection. The Bill does make provision, however, for preference shareholders receiving the material required to be given to common shareholders.

Procedure:

We feel that there are many corporate acts which should properly be done by resolution of the directors, confirmed by the shareholders, rather than by by-law. To permit this, we have defined in the Bill the term "special resolution" and provided that certain appropriate acts may be done by special resolution. It is contemplated that by-laws will be used to authorize only classes of acts to be done from time to time in the future, while single isolated acts will be authorized by resolution or special resolution.

Transmissions:

Representations were made to us respecting the need to clarify and, in a practical manner, simplify the procedure for transmission of deceased shareholders' shares. We have endeavoured to do this in Section 52 of the Bill.

Borrowing Powers of Directors:

During the course of our deliberations, we at one time thought that it might be advisable to limit these powers so that total borrowing should not exceed the amount of the issued capital without the approval of the shareholders, but on further consideration the disadvantages of such a requirement seemed to us to outweigh the advantages.

Dividends:

While, generally speaking, dividends should be paid out of earned surplus, we see no objection to payment of dividends out of contributed surplus provided

that the source is clearly indicated. We recommend the continuation of the present provisions of the Act for companies with wasting assets. Sections 61 and 62 of the Bill deal with dividends.

Election of Directors:

Under the present Companies Act, shareholders representing a bare majority of the shares represented at a meeting at which an election of directors takes place can elect a complete board of directors to the exclusion of any nominee of a minority, even though that minority might have almost, but not quite, the same voting strength as the majority at the meeting. To afford some representation to substantial minorities, the right of cumulative voting has been considered by us.

While this device is quite unknown in corporate procedure in Canada, it is common in the United States of America. In twenty-one States it is mandatory (in twelve of them by the constitution, in the others by statute) while in another seventeen it is permissive. In ten only of the States, no statutory provision exists, and in one of those ten, namely, Texas, mandatory cumulative voting has been recommended in a recent revision of corporation laws prepared by a special committee of the Texas Bar (October 1951). We heard considerable evidence relating to this matter, particularly in our hearings in Chicago and Cleveland and, to a lesser extent, in New York City. The printed proceedings of our Committee for October 29th, 30th and 31st, 1952 (pages 2430-2650 of the proceedings) contain a full discussion on the subject.

We were referred by several persons to a recent book by Charles M. Williams entitled "Cumulative Voting for Directors" published by the Division of Research, Graduate School of Business Administration, Harvard University, Boston (1951). Mr. Williams is Assistant Professor of Finance at Harvard University. In this book Mr. Williams states that his research into significant proxy fights during the period 1943 to 1948 showed that only sixty-nine corporations were involved, of which forty-one had cumulative voting. He states that in those contests in which cumulative voting corporations were involved, only in a few cases were the opposition groups able to gain control of the board, but in a large majority of the cases one or more of the opposition candidates succeeded in gaining a seat on the board. He also shows from a review of the S.E.C. (Security Exchange Commission) files that in the same period 1943 to 1948 inclusive, only one hundred and sixty-four opposition solicitations took place, an average of twenty-six a year, among some two thousand nine hundred companies all subject to mandatory cumulative voting covered in the review, i.e. less than 1% a year. He points out that one other development of recent years in proxy battles is the operation of professional proxy soliciting firms helping to run campaigns.

With respect to small companies, the equivalent of private companies in Ontario, his research reveals that the very weak position of the minority stockholder is strengthened, if only moderately, by the existence of the limited remedies available through cumulative voting.

On the other hand, he states that cumulative voting is not likely to become a practical factor of major significance in large corporations in the near future because of the widely dispersed nature of stock ownership. He gives as an example the fact that the largest stockholder of Montgomery Ward & Co. in July 1950 held less than 1½% of the total shares outstanding.

In his study of the effect of cumulative voting in corporations of medium size, he found that resort to cumulative voting by opposition groups came under one or other of five general headings, namely:

- (a) Reaction to and conflict with failure on the part of management and the board of directors.
- (b) Conflict of financial interests.
- (c) Dissatisfaction with the degree of stockholder representation and influence on the board.
- (d) Irreconcilable differences of opinion facing management policy and extended fight for control.
- (e) Cases involving clashes of personality with opposition groups promoting certain angles and not really representing a broad group of stockholders.

He found that companies incorporated in a state with permissive legislation did not generally elect to make use of cumulative voting. This finding was confirmed by evidence which this Committee heard in Chicago, Cleveland and New York City. He also found that formal resort to cumulative voting among publicly owned companies of medium and large size is the exception rather than the rule even where cumulative voting is mandatory.

Mr. Williams states at page 166 of his book, "The author was impressed with the general sentiments that, on balance, the intangible effects of minority directors were usually good.", and again on page 171, "As a practical matter, the concession of power to stockholders represented by provision for cumulative voting is not of such proportion as to weaken the position of management or the majority in major degree. With or without cumulative voting, top management and the incumbent board hold important and often overwhelming advantages over potential opposition groups." In his investigation he found that management who had not worked under cumulative voting generally had strong doubts and often fears as to the results of its provision in relation to their companies. However, in his concluding paragraph his view is that capable and far-seeing managements have little to fear from cumulative voting, supporting this view by assurances received from business and legal leaders in States where it is mandatory.

One brief presented to us which opposed cumulative voting suggested that a provision similar to that dealt with in section 140 of the Companies' Act of Great Britain should be inserted as an alternative measure to strengthen the hand of minority groups. This provision is embodied in Section 308 of the Bill.

There has been some criticism of the draft section dealing with Cumulative Voting, appearing in the draft Bill, copies of which were very generally circulated for study and comments. To the moderates, willing to progress but cautiously, we would recall with approval, in this context, the words of Alexander Pope in his famous Essay on Criticism,

"Be not the first by whom the new are tried
nor yet the last to lay the old aside."

But in reply to the more violent attacks stemming, we believe, chiefly from fear of loss of some privilege, we are driven to record from Lord Bacon's *Novum Organum*,

“Far more however has knowledge suffered from littleness of spirit and the smallness and slightness of the tasks which human industry has proposed to itself. And what is worst of all this very littleness of spirit comes with a certain air of arrogance and superiority.”

We have approached this and other contentious subjects with a determination to have as full a knowledge as possible of them and our recommendations are made as a result of our best judgment for the consideration of the Legislative Assembly.

Recommendation:

We acknowledge the principle in corporate law of affording reasonable and proper protection to minority shareholders. We believe that the right on notice to use cumulative voting for the election of directors following the procedure in the State of Ohio is the best form for mandatory cumulative voting provisions and we have attached as Appendix “C” the statutory provisions in use in Ohio. We further believe the mandatory system is necessary to give the protection cumulative voting is designed to afford. However, in view of the newness of the subject to Canadian practice and the fact that the Uniformity Committee representative of Canada and the Provinces (or at least nine of them) has recently reconvened, we recommend deferment of the enactment of provisions for mandatory cumulative voting for directors until an opportunity has been given to canvass the views of other Canadian jurisdictions on this important advance. In the meantime, we recommend the enactment of Section 64 of the Bill providing for permissive cumulative voting following the principle contained in the Delaware legislation.

We further recommend that directors may be elected for longer periods than one year, but not exceeding five years provided that at least three directors are elected annually (Section 299 (5) of the Bill) with provision in certain cases for removal of directors by shareholders (Section 66).

*Voting of Shares in Street Name by Persons
other than Owner:*

Section 65 of the draft Bill as originally circulated for study and comments provided considerable discussion, and we concluded that it was not in a satisfactory or practical form. We would have been satisfied to eliminate altogether the subsections objected to if we had obtained assurances that the Toronto Stock Exchange and other regulatory bodies in Ontario would follow the practice with respect to proxy voting of this type generally recognized throughout the United States (See pages 1959 et seq. of the proceedings). As such assurances have not been given, we recommend the enactment of a section which will, we believe, provide the deterrent required without complicating the question of ownership on the records of the companies under the Bill (See Section 76 of the Bill).

Private Companies:

We are of the opinion that protection should be given to a shareholder of a private company who has voted against authorizing a sale of the assets of that company or against a conversion of such company into a public company, by requiring private companies, in either case, to purchase the shares of the dissenting shareholder if he so requires (Section 99 of the Bill). We considered the

position of dissenting shareholders of public companies and particularly the provisions for their protection contained in The Companies Act of Great Britain and in some of the Corporations Acts of certain States of the United States and in the model Act prepared by a committee of the American Bar Association. While we recognize that there is considerable merit in these provisions, we do not feel that we should recommend the adoption of legislation requiring majority interests to purchase the interest of the minority in all similar cases. Our recommendations therefore are confined to minority shareholders of private companies as mentioned above.

Pre-emptive Rights of Shareholders to Participate in the Purchase of Additional Shares:

This subject was considered by the committee but we are not recommending any change in the law.

Directors' Transactions in Shares:

We have considered the requirements in a number of other jurisdictions under this heading and we recommend Section 71 as a middle of the road provision, which would give to shareholders information concerning the transactions of any director in the shares of the company if asked for, the information to be available at the annual meeting in such case.

Auditors and Financial Statements:

The Public Accountancy Act (R.S.O. 1950, Chapter 302) regulates the practice of accountants and recognizing this we have recommended the adoption of the wording of Section 81 of the Bill relating to qualification of auditors with special provisions applicable to private companies where shareholders are unanimous in their choice. A very considerable amount of time has been spent on the sections relating to financial statements. We were greatly assisted in the drafting of these particular sections by the memoranda of the Institute of Chartered Accountants and by the attendance of many of their members in person before our Committee on several occasions. Representatives of other responsible groups interested in these particular sections also attended and assisted us in our work.

We have also seen fit to recommend a special provision authorizing auditors to attend shareholders' meetings, if they so desire, and have made changes in the provisions relating to the contents of the auditors' report.

Sections 82 to 94 of the draft Bill provide for a fuller, more detailed disclosure of the financial position and operations of a company in its annual statements than that required by the present Act. However, it was realized by the Committee that the strict application of the disclosure sections to items of relative insignificance might obscure rather than clarify financial statements and a section was added which allows amounts of relative insignificance to be disregarded. Provision has also been made for showing explanatory information by way of note to the financial statements.

The use of the term "reserve", which has caused confusion in the interpretation of financial statements, has been restricted. The draft Bill also includes definitions of Holding Companies, Subsidiary Companies and Affiliated Companies, together with special requirements in regard to disclosure of their financial affairs. In addition the Bill provides that Subsidiary Companies be prohibited from purchasing shares in their Parent Company.

Life insurance companies subject to Part VI of the Bill will be required to give information as provided by Sections 211 to 217 of the Bill, in lieu of the requirements of Sections 83 to 91. The reason for this is the special nature of life insurance business and accounting.

We are of the opinion that the above mentioned changes, which have received the most careful consideration, represents a considerable improvement over the provisions of the present Act and will be of material assistance to shareholders and others in assessing the financial position of a company and the results of its operations from time to time.

Annual Meetings of Shareholders:

We recommend that every corporation shall hold an annual meeting of shareholders or members not later than eighteen months after incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting (Section 305) and that a public company shall, not less than ten days before the date of the annual meeting, mail to all shareholders of record a copy of the financial statement and the auditors' report to be laid before the annual meeting (Section 93 of the Bill.) In the case of shareholders of private companies, we feel that it will be sufficient if such information is furnished to the shareholder upon demand.

Acquisition of Shares of Small Minority Dissenting Shareholders of Public Company:

We considered the provisions of Section 124 of The Companies Act (Canada) and Section 209 of The Companies Act of Great Britain, which give power to the Court to compel dissenting minorities holding less than ten per cent of the stock involved to conform to the majority (nine-tenths or more) position in certain specified cases and to take the same consideration for their minority holdings, when a transfer of shares is required. We decided against including similar legislation in the Bill.

PART III—CORPORATIONS WITHOUT SHARE CAPITAL:

In the present Act, the provisions applicable only to corporations without share capital are scattered throughout the parts dealing with corporations generally. We have gathered these sections into Part III of the Bill, and have added a number of new sections to clarify the position of these corporations.

The classes of membership and the terms attaching to such classes will, if the Bill is enacted in the form recommended, be governed by the letters patent, supplementary letters patent or by-laws of the corporation and, unless the letters patent or supplementary letters patent or by-laws otherwise provide, each member of each class of members of such a corporation will have one vote. Section 114 provides a scheme for the distribution of the assets of such corporations on dissolution. The general borrowing powers invested in directors of companies under Part II are made applicable to corporations without share capital, as are numerous other sections of Part II (Section 115).

PART IV—MINING COMPANIES:

The provisions of Part Eleven of the present Act relating to Mining Companies have been pretty well eliminated in the Bill. We felt that it would be in accordance with recognized practice to permit companies coming under

this Part to issue their shares at such rates of discount as the directors may from time to time determine, and we have eliminated the old sections requiring the rate of discount to be authorized by a by-law, confirmed by shareholders, and filed with the Provincial Secretary. We have also deleted the provision which gave power to an absent and non-resident director to appoint a proxy to act for him at directors meeting. Such a provision seems to us to be quite unnecessary and has been very rarely used in the past.

Representations were made to us that a Mining Company should be permitted to create preference shares if so desired and the general provisions with respect to preference shares contained in the Act can now be made use of by a Mining Company under the Bill.

PART V—CO-OPERATIVE CORPORATIONS:

We enjoyed the benefits of discussions with persons familiar with this form of corporation during our hearing and this part of the Bill meets with the approval, we believe, of all those who made representations to us in connection with it.

PART VI—INSURANCE CORPORATIONS:

Mr. Roy Whitehead, Superintendent of Insurance in the Province of Ontario, reviewed with us the provisions of Part VI and representations were also made by the Canadian Life Insurance Officers Association and others. We felt that generally speaking the provisions of those sections of Part II, relating to Auditors' and Financial Statements, commented upon earlier in this report, should apply to all companies other than life insurance companies carrying on business under Part VI of the Bill. We already stated our views with respect to the requirements of life insurance companies.

We have had our attention drawn to the draughtsmanship of this Part and, while we have not recommended any changes in detail, we believe that considerable improvement in the draughtsmanship could be made, if competent insurance law experts were engaged to rewrite the Part.

PART VII—WINDING UP:

While we have not recommended many changes in the existing provisions for winding up, we believe that Part VII of the Bill is clearer in its draughtsmanship than Part XIV of the present Act. We have recommended that the term "Contributory" be defined (Section 240).

In the case of a voluntary winding up we feel that the shareholders or members at a general meeting should have the power to fix the cost, charges, expenses and remuneration of the liquidator and that they should also have the power, at such a meeting called for that purpose, to remove a liquidator appointed by them and to appoint another. We feel that the existing legislation which prohibits any action against the Corporation being proceeded with after the commencement of a voluntary winding up is too harsh and we have rewritten that section.

Discussions have taken place with the Public Trustee resulting in section 280 of the Bill, which will facilitate the rateable distribution of property and satisfaction of debts by the liquidator, and bring finality to the winding up in a more satisfactory manner than was previously the case when shareholders and creditors were unknown or their whereabouts unknown.

PART VIII—GENERAL PROVISIONS:

In this Part will be found a number of important Sections, some of them brought forward in the Bill unchanged from existing Legislation, some with amendments, and some entirely new. Some of the more important changes are indicated below:

Where forfeiture to the Crown occurs, it is to be preceded by notice given by the Crown and registered in the appropriate Registry Office or Land Titles Office.

The Section in the existing Act providing for a special seal to be used outside Ontario has been deleted, it having been established that the seal is the mark made on a document, not the instrument used to affix such mark, and that there may be any number of instruments for affixing a corporate seal in existence at the same time.

In the Bill a change in number of directors may be made by special resolution, notice of which must be given by filing with the Provincial Secretary and publishing in the Ontario Gazette.

We heard representations both for and against the requirement that a director be a shareholder. We are of the opinion that a director should be a shareholder but have made provisions in the Bill whereby a person may be elected a director though not a shareholder or member provided that he becomes a shareholder or member within ten days of his election. In certain cases directors may be removed during their term of office by the shareholders or members in the manner provided by Section 66 of the Bill. A quorum of directors may be fixed at less than a majority by special resolution provided that in no case shall a quorum be less than two-fifths of the Board of Directors by provision in this part of the Bill. (Section 300).

We heard a good deal of discussion concerning the holding of annual meetings and the failure to hold annual meetings. Our views are reflected in Sections 305 and 307 and 309, which we believe provide a practical way to deal with this problem. Section 340 should also be read in this connection.

In Section 42 (5) we have provided for closing of the Register of Transfers for a limited period preceding any meeting of shareholders and in Section 75 (5) power is given to require the deposit of proxies before the actual date of the meeting of shareholders or members.

Section 320 of the Bill sets out the manner in which investigations and audits may be obtained by shareholders on application to the Court or on their own resolution.

Court as defined in Section 1 (d) of the Bill means the Supreme Court of Ontario or the County or District Court of the County or District in which the head office of the company is situated. There is provision for the transfer of a proceeding from a County or District Court to the Supreme Court.

Section 326 (3) (5) (6) and (7) of the Bill contains new provisions for the surrender of a corporation's charter where a shareholder or member is unknown, or his whereabouts is unknown. In such a case, the distributive share may be delivered by the corporation to the Public Trustee. Here again we have had the benefit of consultations with the Public Trustee. We believe this Section

will assist materially in bringing finality to proceedings for the surrender of Charter of Corporations, and at the same time give adequate protection to all concerned.

Section 337 of the Bill provides for an appeal to the Court of Appeal from any order of the Court made under the Act.

The Bill includes a Section 340 giving the Court power to order any director, officer or employee of a Corporation who has refused or neglected to do something or to permit something to be done in compliance with the Act to perform the same notwithstanding the imposition of any penalty for such failure or neglect.

We concur in the recommendation of the Honourable the Provincial Secretary that the regulations be expanded to cover fully departmental practice.

PART IX—EXTRA-PROVINCIAL CORPORATIONS:

We recommend that the provisions of The Extra-provincial Corporations Act, R.S.O. 1950, c. 124, be written into Part IX of the Bill, and that The Extra-provincial Corporations Act be repealed.

Share Warrants:

The subject of share warrants was discussed fully by the Committee and the result of these deliberations may be found in Section 48 of the Bill. The nationals of many foreign countries are familiar with this type of certificate and, for varying reasons, frequently desire to make use of it.

Miscellaneous:

We reviewed The Companies Information Act, R.S.O. 1950, c. 60, and we recommend that Section 4 (2) and (3) thereof be repealed, as substantially the same provisions are contained in Section 320 of the Bill, except that this section embodies our view that the remedies provided should only be available by Court Order.

A prospectus is required by Section 2 of The Companies Information Act, to be filed with the Provincial Secretary in all cases where sale in Ontario of any issue of security is intended other than an issue in respect of which a prospectus has been filed elsewhere. In the opinion of the Counsel to our Committee, this is wide enough to require the filing of a prospectus with the Provincial Secretary where an offering is being made to the shareholders of a company, where a prospectus is not required to be filed elsewhere in that connection. In our view Section 2 should be worded in such a way as to make that point clear beyond any possible question for the future.

The Mortmain and Charitable Uses Act:

Consideration has been given to revising the law of mortmain. The Mortmain and Charitable Uses Act causes, no doubt, practical difficulties and delays when property held by a corporation is purchased. It has been suggested that the Act might be repealed altogether. However, it is thought advisable to keep some control over Corporations holding land and therefore it is recommended that the principle of The Mortmain and Charitable Uses Act should be retained. At the same time the Act should be amended to remove some of the practical difficulties. It is recommended that the Act should provide that the Crown shall not effect forfeiture of land unless it has given six months notice to the

Corporation and has registered such notice against the land in question in the appropriate Registry Office or the Land Titles Office. The Act should provide also that unless such notice is so given and registered, the purchaser shall obtain title to the land which title shall not be subject to forfeiture.

These provisions should be retroactive in effect so as to apply to all lands presently subject to forfeiture as well as to those which may be subject to forfeiture in the future. It is recommended also that the Act be amended to provide that no Registrar or Master shall accept a deed to a corporation unless it is accompanied by an affidavit of an officer of the corporation to the effect that the corporation has authority to acquire the land as provided in the Mortmain and Charitable Uses Act. The said Act should also be amended to provide that licences in Mortmain could be granted by the Lieutenant-Governor rather than Lieutenant-Governor in Council. The powers of the Lieutenant-Governor in this respect may be exercised by the Provincial Secretary.

What might otherwise have been a much longer and more detailed report can, we believe, be confined to the foregoing in view of the fact that we have been able to include as Appendix "B" to this report the Bill which reflects our recommendations in phraseology ready for enactment.

It was not considered necessary to include in the Bill a separate Part relating to public utility companies.

Dated at Toronto, Ontario, this 15th day of December, 1952.

A. K. ROBERTS, *Chairman*
DANA PORTER
G. A. WELSH
F. S. THOMAS
E. L. WEAVER
W. M. NICKLE
W. E. BRANDON
AURELE CHARTRAND
W. GRUMMETT

R. J. CUDNEY, *Counsel*
J. B. S. SOUTHEY, *Secretary*

APPENDIX "A"

The following individuals or organizations appeared before the Committee to make representations:

Allen, J. B., Q.C., Toronto, Ont.....	Vol. VII, p. 1540
Arrington, W. R., Chicago, Illinois—Member, Illinois State Legislature.....	Vol. XVII
Association of Professional Engineers of Ontario (Col. T. M. Medland).....	Vol. VII, p. 1485
Barkdell, H.A., Cleveland, Ohio—Past-President, American Bar Association.....	Vol. XVIII
Bickell, P. J., Cleveland, Ohio—Chairman, Corporation Committee, Ohio State Bar Association.....	Vol. XVIII
Boland, J. F., Q.C., Toronto, Ont.....	Vol. XXII, p. 3053
Broker-Dealers' Association (W. M. Wismer, J. W. Gemmell).....	Vol. VII, p. 1485
Brown, Ted, Cleveland, Ohio—Secretary of State, Ohio	Vol. XVIII
Campbell, Whitney, Chicago, Illinois—Member of the Committee on Business Corporations of the American Bar Association.....	Vol. I, p. 112
Canadian Bar Association (R. B. F. Barr, Q.C.).....	Vol. XII, p. 1929
Canadian Life Insurance Officers Association (Major-General Matthews, Messrs. Tuck, Johnson, Russell and Winship)—Not reported.	
Chartered Institute of Secretaries (F. E. K. Udell, R. T. Tanner, C. B. Bell).....	Vol. VIII, p. 1689
Cook, Gordon, Q.C.—Registrar in Bankruptcy, Supreme Court of Ontario.....	Vol. XIII, p. 1939
Co-operative Union of Ontario (L. W. Mitchell, G. H. Ward, H. M. Bailey, G. D. Hughes).....	Vol. XII, p. 1796
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APPENDIX "C"

STATE OF OHIO—CORPORATIONS CODE

SEC. 8623-50a.

ELECTION OF DIRECTORS;

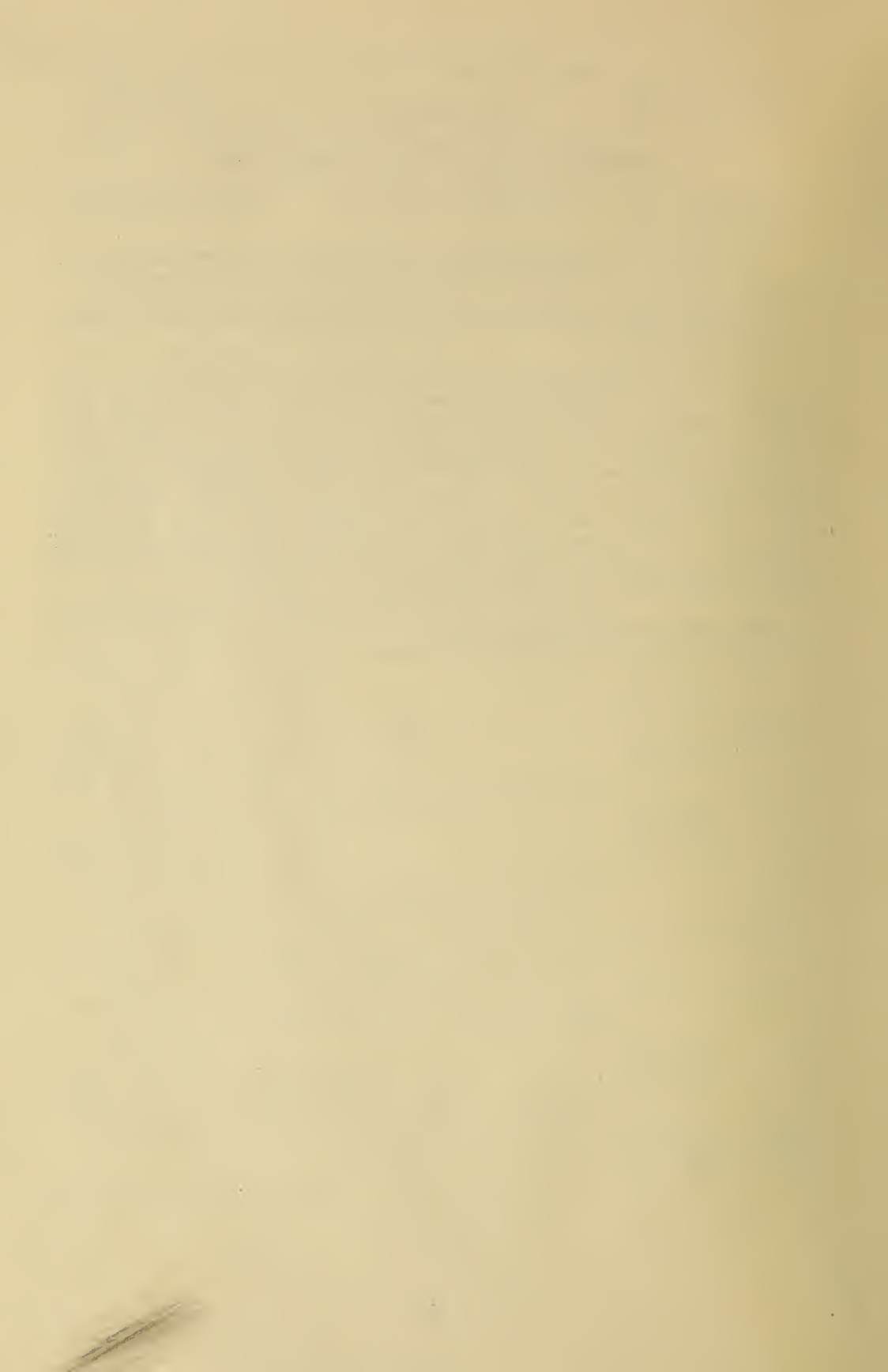
CUMULATIVE VOTING.

At a meeting of shareholders at which directors are to be elected, only persons nominated as candidates shall be eligible for election as directors.

At all elections of directors the candidates receiving the greatest number of votes shall be elected.

If notice in writing is given by any shareholder to the president or a vice-president or the secretary, not less than twenty-four hours before the time fixed for holding a meeting for the election of directors, that he desires that the voting at such election shall be cumulative, and if an announcement of the giving of such notice is made upon the convening of the meeting by the chairman or secretary or by or on behalf of the shareholder giving such notice, each shareholder shall have the right to cumulate such voting power as he possesses and to give one candidate as many votes as the number of directors to be elected multiplied by the number of his votes equals or to distribute his votes on the same principle among two or more candidates, as he sees fit.

Such right to vote cumulatively shall not be restricted or qualified by any provisions in the articles or regulations.



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